

DOCKET FILE COPY ORIGINAL Before the
Federal Communications Commission
Washington, D.C. 20554

MAR 11 2008

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In the Matters of)

Petition of Qwest Corporation for Forbearance
Pursuant to 47 U.S.C. § 160(c) in the Omaha
Metropolitan Statistical Area)

WC Docket No. 04-223

Petition of ACS of Anchorage, Inc. Pursuant to
Section 10 of the Communications Act of 1934, as
Amended, for Forbearance from Sections 251(c)(3)
and 252(d)(1) in the Anchorage Study Area)

WC Docket No. 05-281

Petition of ACS of Anchorage, Inc. Pursuant to
Section 10 of the Communications Act of 1934, as
Amended (47 U.S.C. § 160(c)), for Forbearance
from Certain Dominant Carrier Regulation of Its
Interstate Access Services, and for Forbearance
from Title II Regulation of Its Broadband Services,
in the Anchorage, Alaska, Incumbent Local
Exchange Carrier Study Area)

WC Docket No. 06-109

MEMORANDUM OPINION AND MODIFIED PROTECTIVE ORDERS

Adopted: February 8, 2008

Released: February 8, 2008

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On January 17, 2008, the Verizon Telephone Companies (Verizon) filed a motion¹ requesting modification of the protective order adopted in the Qwest Omaha forbearance proceeding.² In particular, Verizon seeks to be able to access and use the confidential portions of the non-redacted version of the *Qwest Omaha Forbearance Order*³ in its judicial appeal of the *Verizon 6 MSA Forbearance Order*.⁴ For the reasons described below, we grant Verizon's request. We also modify two additional protective

¹ Letter from Brendan J. Crimmins, Counsel for Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-223 & 06-172 (filed Jan. 17, 2008) (Motion to Modify *Qwest Omaha Protective Order*).

² *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Protective Order, 19 FCC Rcd 11377 (WCB 2004) (*Qwest Omaha Protective Order*).

³ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) (*Qwest Omaha Forbearance Order*), *aff'd*, *Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

⁴ *Petitions of Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Memorandum Opinion and Order, FCC 07-212 (rel. Dec. 5, 2007) (*Verizon 6 MSA Forbearance Order*), appeal pending, *Verizon v. FCC*, No. 08-1012 (D.C. Cir. filed Jan. 14, 2008).

orders to allow the litigants participating in this same judicial appeal to access and use the confidential portions of the non-redacted versions of the *ACS UNE Forbearance Order*⁵ and *ACS Dominance Forbearance Order*⁶ (jointly, *ACS Forbearance Orders*) in that appeal.

II. BACKGROUND

2. On September 6, 2006, Verizon filed six petitions seeking forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach MSAs (the 6 MSAs).⁷ On December 5, 2007, the Commission released an order concluding that the record evidence in the 6 MSA proceeding did not satisfy the section 10 forbearance standard with respect to any of the forbearance Verizon requested, and, accordingly, the Commission denied the requested relief in the 6 MSAs.⁸ On January 14, 2008, Verizon filed its appeal of the *Verizon 6 MSA Forbearance Order* in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit).

3. The *Verizon 6 MSA Forbearance Order* relies in part on Commission precedent, including the *Qwest Omaha Forbearance Order* and both *ACS Forbearance Orders*.⁹ All three of these orders are based, in part, on factual findings the Commission made in reliance on confidential information parties had submitted pursuant to the applicable protective order in each proceeding. Consequently, the nonredacted version of these orders discloses some of the confidential information in these records. Each protective order limits the use of confidential information in the record to that proceeding and any judicial proceeding arising therefrom.¹⁰ Each protective order further provides that its terms do not terminate at the conclusion of the relevant proceeding.¹¹

⁵ *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, Memorandum Opinion and Order, 22 FCC Rcd 1958 (2007) (*ACS UNE Forbearance Order*), appeals dismissed, *Covad Communications Group, Inc. v. FCC*, Nos. 07-70898, 07-71076, 07-71222 (9th Cir. 2007) (dismissing appeals for lack of standing).

⁶ *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007) (*ACS Dominance Forbearance Order*), petitions for recon. pending.

⁷ See, e.g., *Verizon 6 MSA Forbearance Order*, para. 1. Specifically, Verizon sought forbearance in the 6 MSAs for its mass market switched access services from the following: tariffing requirements, price cap regulation, and dominant carrier requirements concerning the processes for acquiring lines, discontinuing services, assignment or transfers of control, and acquiring affiliations. *Id.* Verizon also sought forbearance from section 251(c)(3) loop and transport unbundling obligations and all *Computer III* obligations (e.g., open network architecture (ONA) and comparably efficient interconnection (CEI) requirements). *Id.*

⁸ *Id.*

⁹ See, e.g., *id.* at para. 20 (stating that "the Commission previously has evaluated requests for relief similar to that sought by Verizon in the *Qwest Omaha Forbearance Order* and *ACS UNE Forbearance Order* and *ACS Dominance Forbearance Order*, and the analytical framework established in that precedent guides our actions here").

¹⁰ See *Qwest Omaha Protective Order*, 19 FCC Rcd at 11379, para. 7 (precluding use of confidential information "for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings"). See also *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, Protective Order, 20 FCC Rcd 16310, 16311, para. 7 (WCB 2005) (*ACS UNE Protective Order*); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local* (continued....)

4. As noted above, on January 17, 2008, Verizon filed a motion requesting modification of the protective order adopted in the Qwest Omaha forbearance proceeding.¹² Verizon seeks to be able to access and use the confidential portions of the non-redacted version of the *Qwest Omaha Forbearance Order* in its judicial appeal of the *Verizon 6 MSA Forbearance Order*. Specifically, Verizon requests permission (i) for its outside appellate and in-house counsel who have signed the *Qwest Omaha Protective Order* to obtain and review copies of the complete, unredacted version of the *Qwest Omaha Forbearance Order*; (ii) to provide the court of appeals with the that unredacted order; and (iii) to refer to, and quote from, that unredacted order in its submissions to the court of appeals.¹³ Verizon states that it would file the unredacted order, and any brief containing references to that order, under seal, pursuant to the same procedures the D.C. Circuit used in the appeal of the *Qwest Omaha Forbearance Order*.¹⁴ ATX Communications, Inc. *et al.* request that if the Motion to Modify *Qwest Omaha Protective Order* is granted, similar modifications be made to the protective orders in the ACS forbearance proceedings.¹⁵

III. DISCUSSION

5. We conclude that modifying the *Qwest Omaha Protective Order*, the *ACS UNE Protective Order* and the *ACS Dominance Protective Order* is in the public interest. Therefore, we modify these three protective orders to permit limited access to and disclosure and use of the unredacted versions of the *Qwest Omaha Forbearance Order* and *ACS Forbearance Orders* solely for purposes of the judicial appeal of the *Verizon 6 MSA Forbearance Order*. The portions of the *Qwest Omaha Forbearance Order* subject to redaction disclose information Qwest and/or Cox Communications, Inc. (Cox) designated as confidential pursuant to the *Qwest Omaha Protective Order*. Both Qwest and Cox have consented to modifying the *Qwest Omaha Protective Order* in the manner adopted here.¹⁶ The portions of the *ACS Forbearance Orders* subject to redaction disclose information ACS of Anchorage, Inc. (ACS) and/or General Communications, Inc. (GCI) designated as confidential pursuant to the *ACS Protective Orders*, including certain sensitive information regarding AT&T Alascom, which is a subsidiary of AT&T, Inc (AT&T). ACS, GCI, and AT&T each have consented to modifying the *ACS Protective Orders* in the manner adopted here.¹⁷ Therefore, in light of the consent of the affected parties, we modify the *Qwest*

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Exchange Carrier Study Area, WC Docket No. 06-109, Protective Order, 21 FCC Rcd 6560, 6561, para. 7 (WCB 2006) (*ACS Dominance Protective Order*) (jointly, *ACS Protective Orders*).

¹¹ See *Qwest Omaha Protective Order*, 19 FCC Rcd at 11379, para. 11 ("The provisions of this order shall not terminate at the conclusion of this proceeding."); *ACS UNE Protective Order*, 20 FCC Rcd at 16312, para. 11 (same); *ACS Dominance Protective Order*, 21 FCC Rcd at 6562, para. 11 (same).

¹² Motion to Modify *Qwest Omaha Protective Order* at 1-2. The *Qwest Omaha Protective Order* states that "[n]othing in this order shall prevent any party or other person from seeking modification of this order." *Qwest Omaha Protective Order*, 19 FCC Rcd at 11379, para. 12.

¹³ Motion to Modify *Qwest Omaha Protective Order* at 2.

¹⁴ *Id.*

¹⁵ See Letter from Philip J. Macres *et al.*, Counsel for ATX Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-223, 05-281, 06-109 & 06-172 at 12-14 (filed Jan. 28, 2008) (ATX Comments).

¹⁶ Motion to Modify *Qwest Omaha Protective Order* at 6 (stating that "counsel for Qwest has authorized [Verizon] to state that Qwest consents to the relief sought herein"); Letter from J.G. Harrington, Counsel for Cox Communications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-223 & 06-172 at 2 (filed Jan. 29, 2008) (Cox Comments) (stating that Cox does not object to Verizon's request provided the Commission "strictly limit[s] use of the confidential material to the context of Verizon's appeal" and "require[s] that any party's counsel must sign onto and abide by the terms of the *Omaha Protective Order*").

¹⁷ Letter from Evan T. Leo, *et al.*, Counsel for Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-223, 05-281, 06-109 & 06-172 at 4 (filed Feb. 1, 2008) (Verizon Comments) (stating that Verizon contacted counsel

(continued....)

Omaha Protective Order and *ACS Protective Orders* accordingly.¹⁸ We emphasize that these modifications permit limited access to and disclosure and use of the unredacted version of the *Qwest Omaha Forbearance Order* and *ACS Forbearance Orders* solely for the pending appeal of the *Verizon 6 MSA Forbearance Order* before the D.C. Circuit and not future judicial or regulatory proceedings.

6. Furthermore, we agree with ATX Communications, Inc. *et al.* that all litigants participating in the appeal of the *Verizon 6 MSA Forbearance Order* should have the same rights as Verizon regarding the unredacted version of the *Qwest Omaha Forbearance Order* and *ACS Forbearance Orders*.¹⁹ By litigants, we mean those parties who are named petitioners or intervenors and their outside appellate and in-house counsel. We believe the limited modification of the three protective orders we adopt here will ensure that all parties involved in the appeal will have access to the same precedent to support their arguments before the D.C. Circuit.²⁰ We emphasize that the terms of the modified protective orders set forth as appendices will govern access to and use of the nonredacted *Qwest Omaha Forbearance Order* and *ACS Forbearance Orders*.

7. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 160, and section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the Modified Protective Order in WC Docket No. 04-223 IS ADOPTED, effective upon its release.

8. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 160, and section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the Modified Protective Order in WC Docket No. 05-281 IS ADOPTED, effective upon its release.

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for ACS, GCI and AT&T and each "has authorized us to state that its client consents to the modification of the [ACS] [P]rotective [O]rders" for purposes of the judicial appeal of the *Verizon 6 MSA Forbearance Order* subject to the conditions proposed by Cox and Verizon); Letter from John T. Nakahata, Counsel for GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-281, 06-109 & 06-172 at 2 (filed Feb. 1, 2008) (GCI Comments) (stating that GCI consents to modification of the *ACS Protective Orders* provided that the Commission limit use of the confidential material solely to Verizon's judicial appeal and require counsel seeking to gain access to the *ACS Forbearance Orders* sign and abide by the terms of the relevant protective orders).

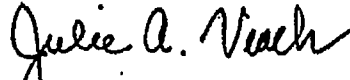
¹⁸ No party has opposed permitting Verizon to use such confidential information in its appeal of the *Verizon 6 MSA Forbearance Order*. See ATX Comments at 14 (requesting the Commission to make certain information that is redacted in the *Qwest Omaha Forbearance Order* and other orders public, but stating that "if the Commission chooses to maintain the confidentiality of these documents, it should modify the protective orders . . . to permit all parties to an appeal . . . to quote from and rely upon the unredacted orders subject to the conditions proposed by Verizon in its Motion").

¹⁹ See ATX Comments at 12-13; see also Verizon Comments at 3 n.6 (regarding use of *Qwest Omaha Forbearance Order*); GCI Comments at 2 (regarding use of *ACS Forbearance Orders*); Cox Comments at 1 (regarding use of *Qwest Omaha Forbearance Order*).

²⁰ Because we resolve the issues raised in Verizon's motion, we need not address the other requests of ATX Communication *et al.* regarding making public certain portions of the *Qwest Omaha Forbearance Order* and the *ACS Forbearance Orders*. See, e.g., ATX Comments at 7-12.

9. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j) and 10 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 160, and section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the Modified Protective Order in WC Docket No. 06-109 IS ADOPTED, effective upon its release.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Julie A. Veach".

Julie A. Veach
Deputy Chief, Wireline Competition Bureau

APPENDIX A
Modified Protective Order in WC Docket No. 04-223

1. Documents submitted to the Commission in the course of section 10 forbearance proceedings may represent or contain confidential or proprietary information. This Protective Order is intended to facilitate and expedite the review of confidential information submitted by parties to this proceeding, including the privileged and confidential information, including trade secrets or financial information, submitted by Qwest in the non-redacted version of its Petition in the above-referenced proceeding. To ensure that documents and materials in the above-referenced proceeding considered by the applicants or other submitters to be confidential and proprietary are afforded protection, the Wireline Competition Bureau hereby enters this Modified Protective Order:

2. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person. A "stamped confidential document" means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" to signify that it contains information believed to be subject to protection under the Commission's rules. For purposes of this order, the term "document" means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission's rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

3. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this PROTECTIVE ORDER, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (See Attachment for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is listed in paragraph 3 (other than an attorney) and who is employed by a competitor or potential competitor of the party that so designated the document, the party seeking such disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure,

disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C., location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

5. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER."

6. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 5, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, *sua sponte* or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. *See generally* 47 C.F.R. § 0.459.

7. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising there from, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all confidential information is redacted. Persons filing pleadings under seal based on confidential information provided by others shall serve such pleadings by hand or overnight delivery on the party originally requesting confidential treatment of the underlying information.

8. Participation in Appeal of *Verizon 6 MSA Forbearance Order*. Notwithstanding any other provision of this Modified Protective Order, and solely for the purpose of participating in the appeal of the *Verizon 6 MSA Forbearance Order*, WC Docket No. 06-172, Memorandum Opinion and Order, FCC 07-212 (rel. Dec. 5, 2007) to the United States Court of Appeals for the District of Columbia Circuit (*Verizon Tel. Cos. v. FCC*, Docket No. 08-1012), litigants' outside appellate and in-house counsel who have signed the certification required by paragraph 3(a) may: (i) obtain and review copies of the complete, unredacted version of the *Qwest Omaha Forbearance Order*; and (ii) file with the court the unredacted *Qwest Omaha Forbearance Order* or confidential information therein only in accordance with Circuit Rule 47.1 of the United States Court of Appeals for the District of Columbia Circuit. Persons relying on this paragraph must comply with all of the other requirements of this Modified Protective Order to the extent not inconsistent with this paragraph. Persons relying on this paragraph should file the written notice required by subparagraph 3(b) with the Wireline Competition Bureau in WC Docket No. 04-223 via the Commission's Electronic Comment Filing System (ECFS).

9. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

10. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the section 10 proceeding in which a confidential document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraphs 3 or 8 above.

11. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

12. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

13. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

14. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

15. Return of Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties that have received stamped confidential documents shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

16. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

ATTACHMENT TO APPENDIX A

Acknowledgment of Confidentiality

WC DOCKET NO. 04-223

I have received a copy of the Modified Protective Order in WC Docket No. 04-223. I have read the order and agree to comply with and be bound by the terms and conditions of this Modified Protective Order. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of this Modified Protective Order.

SIGNATURE:

NAME PRINTED:

TITLE:

ADDRESS:

REPRESENTING:

EMPLOYER:

DATE:

APPENDIX B
Modified Protective Order in WC Docket No. 05-281

1. Documents submitted to the Commission in the course of section 10 forbearance proceedings may represent or contain confidential or proprietary information. This Protective Order is intended to facilitate and expedite the review of confidential information submitted by parties to this proceeding, including any privileged and confidential information, including trade secrets or financial information, submitted by ACS of Anchorage, Inc. (ACS) in the above-referenced proceeding. To ensure that documents and materials in the above-referenced proceeding considered by the applicants or other submitters to be confidential and proprietary are afforded protection, the Wireline Competition Bureau hereby enters this Protective Order:

2. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person. A "stamped confidential document" means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" to signify that it contains information believed to be subject to protection under the Commission's rules. For purposes of this order, the term "document" means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission's rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

3. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this PROTECTIVE ORDER, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (See Attachment for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is listed in paragraph 3 (other than an attorney) and who is employed by a competitor or potential competitor of the party that so designated the document, the party seeking such disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure,

disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C., location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

5. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER."

6. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 5, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, *sua sponte* or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. See generally 47 C.F.R. § 0.459.

7. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising there from, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all confidential information is redacted. Persons filing pleadings under seal based on confidential information provided by others shall serve such pleadings by hand or overnight delivery on the party originally requesting confidential treatment of the underlying information.

8. Participation in Appeal of Verizon 6 MSA Forbearance Order. Notwithstanding any other provision of this Modified Protective Order, and solely for the purpose of participating in the appeal of the *Verizon 6 MSA Forbearance Order*, WC Docket No. 06-172, Memorandum Opinion and Order, FCC 07-212 (rel. Dec. 5, 2007) to the United States Court of Appeals for the District of Columbia Circuit (*Verizon Tel. Cos. v. FCC*, Docket No. 08-1012), litigants' outside appellate and in-house counsel who have signed the certification required by paragraph 3(a) may: (i) obtain and review copies of the complete, unredacted version of the *ACS UNE Forbearance Order*; and (ii) file with the court the unredacted *ACS UNE Forbearance Order* or confidential information therein only in accordance with Circuit Rule 47.1 of the United States Court of Appeals for the District of Columbia Circuit. Persons relying on this paragraph must comply with all of the other requirements of this Modified Protective Order to the extent not inconsistent with this paragraph. Persons relying on this paragraph should file the written notice required by subparagraph 3(b) with the Wireline Competition Bureau in WC Docket No. 05-281 via the Commission's Electronic Comment Filing System (ECFS).

9. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

10. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the section 10 proceeding in which a confidential document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 3 or 8 above.

11. Prohibited Copying. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Commission, with notice to counsel so designating the document.

12. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding.

13. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification of this order.

14. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

15. Return of Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties that have received stamped confidential documents shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

16. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

ATTACHMENT TO APPENDIX B

WC DOCKET NO. 05-281

I have received a copy of the Modified Protective Order in WC Docket No. 05-281. I have read the order and agree to comply with and be bound by the terms and conditions of this Modified Protective Order. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of this Modified Protective Order.

SIGNATURE:

NAME PRINTED:

TITLE:

ADDRESS:

REPRESENTING:

EMPLOYER:

DATE:

APPENDIX C
Modified Protective Order in WC Docket No. 06-109

1. Documents submitted to the Commission in the course of section 10 forbearance proceedings may represent or contain confidential or proprietary information. This Protective Order is intended to facilitate and expedite the review of confidential information submitted by parties to this proceeding, including any privileged and confidential information, including trade secrets or financial information, submitted by ACS of Anchorage, Inc. (ACS) in the above-referenced proceeding. To ensure that documents and materials in the above-referenced proceeding considered by the applicants or other submitters to be confidential and proprietary are afforded protection, the Wireline Competition Bureau hereby enters this Protective Order:

2. Non-Disclosure. Except with the prior written consent of the person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person. A "stamped confidential document" means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" to signify that it contains information believed to be subject to protection under the Commission's rules. For purposes of this order, the term "document" means all written, recorded, or graphic material, whether produced or created by a party or another person, whether produced pursuant to the Commission's rules, pursuant to subpoena, by agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

3. Permissible Disclosure. Notwithstanding paragraph 2, stamped confidential documents may be disclosed subject to the provisions of subparagraphs (a) and (b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for parties that may file in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; outside consultants or experts retained to render professional services in this proceeding, provided that they are under the supervision of the counsel of record; and in-house economists and regulatory analysts, provided that they are under the supervision of the counsel of record. Such documents may also be disclosed to relevant employees of regulatory agencies, Commission employees involved in this proceeding, and to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

(a) Notwithstanding any other provision of this order, before any disclosure shall occur, any individual (other than a Commission employee) to whom confidential information is disclosed must certify in writing that he/she has read and understands this PROTECTIVE ORDER, agrees to abide by its terms, and understands that unauthorized disclosures of the stamped confidential documents are prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. (See Attachment for a model certification.)

(b) Before disclosing a stamped confidential document to any person who is listed in paragraph 3 (other than an attorney) and who is employed by a competitor or potential competitor of the party that so designated the document, the party seeking such disclosure shall give at least five days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. No such disclosure shall be made within the five-day period. If, within the five-day period, a motion is filed objecting to the proposed disclosure,

disclosure is not permissible until the Commission has denied such motion and disclosure is permitted under 47 C.F.R. § 0.459. Any such motion shall be hand-served on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing confidential information pursuant to this order shall designate a Washington, D.C., location and such other locations as may be convenient at which all parties shall be permitted access to and review of requested confidential information pursuant to the other terms of this order, or pursuant to alternative arrangements agreed upon by the parties. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party.

5. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record of this proceeding, provided that such confidential information is furnished under seal. The party submitting confidential documents shall ensure that each page bears the legend "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER."

6. Commission Treatment of Confidential Information. If confidential documents are submitted to the Commission in accordance with paragraph 5, the materials shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents. The Commission may, *sua sponte* or by petition, determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment. See generally 47 C.F.R. § 0.459.

7. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only in the conduct of this proceeding and any judicial proceeding arising there from, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to confidential information under the terms of this order may disclose, describe, or discuss the confidential information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all confidential information is redacted. Persons filing pleadings under seal based on confidential information provided by others shall serve such pleadings by hand or overnight delivery on the party originally requesting confidential treatment of the underlying information.

8. Participation in Appeal of Verizon 6 MSA Forbearance Order. Notwithstanding any other provision of this Modified Protective Order, and solely for the purpose of participating in the appeal of the *Verizon 6 MSA Forbearance Order*, WC Docket No. 06-172, Memorandum Opinion and Order, FCC 07-212 (rel. Dec. 5, 2007) to the United States Court of Appeals for the District of Columbia Circuit (*Verizon Tel. Cos. v. FCC*, Docket No. 08-1012), litigants' outside appellate and in-house counsel who have signed the certification required by paragraph 3(a) may: (i) obtain and review copies of the complete, unredacted version of the *ACS Dominance Forbearance Order*; and (ii) file with the court the unredacted *ACS Dominance Forbearance Order* or confidential information therein only in accordance with Circuit Rule 47.1 of the United States Court of Appeals for the District of Columbia Circuit. Persons relying on this paragraph must comply with all of the other requirements of this Modified Protective Order to the extent not inconsistent with this paragraph. Persons relying on this paragraph should file the written notice required by subparagraph 3(b) with the Wireline Competition Bureau in WC Docket No. 06-109 via the Commission's Electronic Comment Filing System (ECFS).

9. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party and any other person who designated the document as confidential of the pendency of such subpoena or order.

10. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the section 10 proceeding in which a confidential document is submitted and, in the course thereof, relying generally on examination of stamped confidential documents submitted in that proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 3 or 8 above.

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14. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for purposes of filing at the Commission under seal.

15. Return of Confidential Documents. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), parties that have received stamped confidential documents shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

16. Penalties. In addition to any other penalties or remedies authorized under the Communications Act, the Commission's rules, the common law or other source of law, any failure to abide by the terms of this order may result in dismissal of a party's pleadings, or censure, suspension, or disbarment of the attorneys involved, *see* 47 C.F.R. § 1.24, or possible referral to the relevant local bar.

ATTACHMENT TO APPENDIX C

WC DOCKET NO. 06-109

I have received a copy of the Modified Protective Order in WC Docket No. 06-109. I have read the order and agree to comply with and be bound by the terms and conditions of this Modified Protective Order. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of this Modified Protective Order.

SIGNATURE:

NAME PRINTED:

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DATE: